

Unregistered de minimis servicemen must either pay Use Tax to their suppliers or self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. See 86 Ill. Adm. Code 140.101(f). (This is a GIL).

October 5, 2000

Dear Xxxxx:

This General Information Letter, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of September 8, 2000. Review of your request for a Private Letter Ruling disclosed that information regarding the specific nature of the transactions of your client was not provided. As a result, we are unable to issue a Private Letter Ruling. Instead, we are issuing this General Information Letter.

In your letter, you have stated and made inquiry as follows:

The Department of Revenue's information hotline referred me to your office. I am requesting a Private Letter Ruling as defined by the Illinois Department of Revenue Regulations, Title 2, Subtitle D, Part 1200, Section 1200.110.

Attached you will find all the relevant information and my Power of Attorney. I appreciate your consideration and cooperation and look forward to your response.

If there are any questions or you need additional information please don't hesitate to contact my office.

In your Request for Private Letter Ruling, you have stated as follows:

Our client, COMPANY, is recently incorporated and a new business. It is not a successor organization of any previously existing business. COMPANY is in the business of reproducing materials by photocopy and/or scanning. We request a Private Letter Ruling as to his liability for Retailers Occupation, Service Occupation or Use Tax liability, if any, on a proposed transaction.

To the best of our knowledge the Department of Revenue has not ruled on this issue, or a similar issue, for the taxpayer, nor has the taxpayer or any representative withdrawn a previously submitted request for a ruling on the same issue prior to the Department issuing a Letter Ruling. COMPANY, being newly organized is not under audit or threat of audit nor do they have any litigation pending with the Illinois Department of Revenue.

Statement of the Issue

One of the products COMPANY intends to market is trial boards for use as exhibits in court proceedings. The customer supplies the material that is being copied and the copies are being made according to the customer's specifications. This process involves enlarging the item provided and photocopying it onto heavyweight cardboard, making it suitable as an exhibit. The cost of the materials transferred as part of this process is approximately 13% to 25% of the total price of the transaction.

Relevant Authorities (Copies attached)

Title 86, Part 130-150 relate to Retailers Occupation, Service occupation and Use Tax. Part 130, Section 130.20(c)(1) provide exemption from Retailer's Occupation Tax for persons engaged in the graphic arts, specifically, photostating.

Part 140, Section 140.01(f) provides exemption from the Service Occupation Tax provided that the cost price of the personal property transferred as an incident of a sale of service is less than 75% of the total price of the transaction.

Part 150, Section 150.101(c) notes that exemption from Retailer's Occupation tax also exempts a seller from the use tax.

Conclusion

The Regulations appear to provide our client exemption from the collection of the taxes noted in our request. Our concerns arise from the fact that an out-of-state vendor, providing the same service, does collect Illinois sales tax. Compounding the confusion is the fact that local outlets for a national chain of copy centers deduct sales tax from vending machine purchases of a prepaid copy card.

We would like assurance that our client is in compliance with IDOR Regulations with respect to the proposed transaction. Avoiding an assessment based on the misinterpretation of Title 86 is in everyone's best interest.

Photocopying services are considered personal services. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. As you have noted, 86 Ill. Adm. Code 130.2000(c)(1) provides that "[a] photostater who is employed to reproduce material for his customer by the photostating process, or a printer who is employed to print material for his customer in accordance with copy supplied to the printer by the customer or otherwise in accordance with the customer's specifications and special order, or a person who otherwise engages primarily in the transaction in furnishing graphic arts' services is not engaged in such transaction in the business of selling tangible personal property within the meaning of the Act, if the item so produced does not serve substantially the same function as stock or standard items of tangible personal property that are

sold at retail, but is engaged in such transaction primarily in a service occupation." Therefore, a serviceman providing photostating services is generally not subject to Retailers' Occupation Tax on his receipts therefrom. Such servicemen are subject to Service Occupation Tax.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. These options in calculating Service Occupation Tax may account for the different practices of your client's competitors.

From the information provided in your letter, we assume that your client is an unregistered de minimis serviceman. That is, he is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act and his annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 75% (for persons engaged in graphic arts production) of his annual aggregate gross receipts from service transactions. Please note that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

As you have noted, 86 Ill. Adm. Code 140.101(f) provides that unregistered de minimis servicemen are not subject to Service Occupation Tax on the gross receipts of their sales of tangible personal property incident to sales of service. Such transactions are not considered to be "sales of service" under Section 2 (g) of the Service Occupation Tax Act (35 ILCS 115/2 (g)). The statute provides, instead, that purchases by these servicemen of the tangible personal property that they transfer to their customers incident to sales of service shall be subject to Retailers' Occupation Tax and Use Tax.

You appear to be making an argument that since your client is exempt from Retailers' Occupation Tax under Section 130.2000 (c)(1), he is also exempt from any payment of Use Tax as a de minimis serviceman. You base your conclusion upon the provisions of Section 150.101 (c). That section provides, in part, that "if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act ... despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act shall not apply...." We cannot agree with your interpretation of these provisions. These provisions reflect the complementary operation of the Retailers' Occupation Tax, imposed upon the retailer, and the Use Tax, which is imposed upon the purchaser. If a seller is not taxed on a transaction, neither will the purchaser be taxed. You have misconstrued them, however, to apply simultaneously to your client as both a retailer and a purchaser. In the situation you have described, two different steps are involved. The first inquiry that must be made is whether your client is a retailer. We agree that your client may well be exempted from liability as a retailer under the Retailers' Occupation Tax because he is engaged in making sales of service. If so, we must next examine what tax consequences will be triggered by his activities. If he is engaged in making sales of service, he would be considered a serviceman subject to the provisions of the Service Occupation Tax Act. As we have indicated previously, if your client qualifies as a de minimis serviceman not required to be registered under Section 2a of the Retailers' Occupation Tax, he may

handle his tax liability by remitting Use Tax on the cost price of the tangible personal property transferred to his service customer. In this situation, your client functions as a purchaser, not a retailer. An Illinois supplier will incur Retailers' Occupation Tax on the paper, for instance, which is sold to your client, and your client will incur the corresponding Use Tax liability. Your client cannot rely upon the provisions of Section 150.101 (c) to obviate his Use Tax liability, because in this case, the supplier is in fact subject to Retailers' Occupation Tax liability, and will be required to collect the corresponding Use Tax liability incurred by your client.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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